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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-120559-23

Date:

March 18, 2024

RE:

LEGEND

Decedent	=
Spouse	=
Trust	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Accountant	=
CPA Firm	=

Dear :

This letter responds to a letter dated October 6, 2023, and supplemental correspondence, submitted on behalf of Decedent's estate, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code (Code) and a "reverse" QTIP election under § 2652(a)(3).

The facts and representations submitted are summarized as follows:

On Date 1, Decedent and Spouse (Settlors) executed a revocable trust, Trust. Trust was amended and restated on Date 2. Decedent died testate on Date 3, survived by Spouse.

Article III of Trust provides, in relevant part, that upon the death of the first settlor to die (the “deceased spouse”) the surviving settlor’s (the “surviving spouse”) nonmarital property and a half-share of the marital property is to be set aside and held in further trust known as Survivor’s Trust. The balance of the Trust assets (the “net estate”) is to be segregated and designated as the Marital Share and Family Share.

Pursuant to Paragraph (D) of Article III, the Marital Share shall be an amount equal to the smallest marital deduction allowable to the deceased spouse’s estate for federal estate tax purposes that is sufficient to eliminate or minimize federal estate tax on the deceased spouse’s estate, after taking into account: (i) the credit against the federal estate tax under § 2010 of the Code, and (ii) all property included in the deceased spouse’s gross estate for federal estate tax purposes that passes or has passed to the surviving spouse, the Survivor’s Trust, the Marital Trust or the Marital Share, in such manner as to qualify for the federal estate tax marital deduction.

Pursuant to Paragraph (D)(1)(c) of Article III, the Marital Share shall be divided into two separate parts, to be known as Part A and Part B, as follows:

- (i) Part A, which shall be allocated to the Marital Trust and held, administered and distributed pursuant to Article V, shall consist of the largest fractional share of the Marital Share, if any, that can qualify for deceased spouse’s generation-skipping transfer tax exemption under § 2631, in order to produce an inclusion ratio of zero for the Marital Trust under § 2642, after taking into account any exemption that is first allocated to the assets of the Family Share and held as Family Trust A, and to any direct skips or other generation-skipping transfers occurring at the time of deceased spouse’s death as to which deceased spouse is the transferor. Deceased spouse’s executor is directed to allocate enough of deceased spouse’s GST exemption to the assets of the Marital Trust to produce an inclusion ratio of zero for the Marital Trust. (GST Exempt Marital Trust)
- (ii) The balance of the Marital Share, if any, remaining after allocation to Part A shall be segregated as Part B, and distributed to the Survivor’s Trust, to be held, administered and distributed pursuant to Article IV, unless otherwise directed by surviving spouse.

Pursuant to Paragraph (D)(1)(e) of Article III, the balance of the net trust estate remaining after the allocation to the Marital Share shall be designated the Family Share and divided into two separate trusts, known as Family Trust A and Family Trust B.

Article V governs the administration of the Marital Trust. Paragraph (A) provides that during surviving spouse’s lifetime, the trustee shall distribute to surviving spouse all of the net income of such trust at least quarter-annually. If at any time any nonproductive assets are held in Marital Trust, surviving spouse shall have full right to direct the trustee to convert the same to productive assets. Paragraph (B) authorizes the trustee to distribute or apply to or for the benefit of surviving spouse as much of the principal as

the trustee determines to be advisable for surviving spouse's health, education, support in reasonable comfort or maintenance. Paragraph (C) provides, in relevant part, that Marital Trust is to terminate at the death of the surviving spouse. With respect to any portion of the trust estate over which the surviving spouse did not exercise her testamentary limited power of appointment, the property will be distributed to Family Trust A.

Article XVII provides that it is Settlers' intent that all provisions relating to the Marital Trust created shall comply with and be administered in accordance with all marital deduction requirements of the Internal Revenue Code so that if an appropriate election is made under § 2056(b)(7), the deceased spouse's estate will be entitled to the marital deduction for federal estate tax purposes.

Spouse, while serving as executor of Decedent's estate, retained Accountant, a certified public accountant, of CPA Firm, to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. On Date 4, the Form 706 was timely filed (on extension) on behalf of the estate. The Form 706 reported Decedent's assets as "all other property" on Schedule M and reported no "QTIP property." Accountant also failed to include Schedule R with the return. Thus, neither the QTIP election nor a reverse QTIP election was made with respect to the GST Exempt Marital Trust. CPA did not advise Spouse, as the executor of Decedent's estate, to make the QTIP and reverse QTIP elections, or apply Decedent's GST exemption to the GST Exempt Marital Trust. It is represented that Decedent has sufficient GST exemption to allocate to the GST Exempt Marital Trust.

You have requested the following rulings:

1. An extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election under § 2056(b)(7) with respect to the GST Exempt Marital Trust.
2. An extension of time under §§ 301.9100-1 and 301.9100-3 to make a "reverse" QTIP election under § 2652(a)(3) with respect to the GST Exempt Marital Trust.

LAW AND ANALYSIS

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2044 provides, in part, that the value of the gross estate shall include the value of any property for which a deduction was allowed with respect to the transfer of such property to the decedent under § 2056(b)(7) in which the decedent had a qualifying income interest for life.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting

from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term “qualified terminable interest property” as property: (I) which passes from the decedent; (II) in which the surviving spouse has a qualifying income interest for life as defined in § 2056(b)(7)(B)(ii); and (III) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and (II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2101). For purposes of this paragraph, the term “return of tax imposed by § 2001” means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

Section 2601 imposes a tax on every generation-skipping transfer. Section 2611(a) provides that the term “generation-skipping transfer” means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the GST tax is determined by multiplying the taxable amount by the applicable rate. Section 2641(a) provides that the term “applicable rate” means, with respect to any GST transfer, the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which the individual is the

transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(e)(1) provides that, in general, any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows: (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 26.2632-1(d)(2) of the Generation-Skipping Transfer Tax Regulations provides that a decedent's unused GST exemption is automatically allocated on the due date for filing the Form 706, or Form 706NA, to the extent not otherwise allocated by the decedent's executor on or before that date. Unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on the basis of the chapter 11 value of the nonexempt portion of the trust property to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. No automatic allocation of GST exemption is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust. The automatic allocation is irrevocable.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of one over the applicable fraction determined for the trust. Section 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption allocated to the trust and the denominator of which is the value of the property transferred to the trust, reduced by the sum of any federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2652(a)(1) provides that for purposes of chapter 13, the term "transferor" means: (A) in the case of any property subject to the tax imposed by chapter 11, the decedent; and (B) in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides, in pertinent part, that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in such trust for GST tax purposes as if the election to be treated as qualified terminable interest property had not been made (“reverse” QTIP election).

Section 26.2652-2(a) provides, in part, that a “reverse” QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Section 26.2652-2(b) provides that an election under § 2652(a)(3) is made on the return on which the QTIP election is made.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor of Decedent’s estate is granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to GST Exempt Marital Trust and make a reverse QTIP election with respect to the GST Exempt Marital Trust. Decedent’s available GST exemption will be automatically allocated under § 2632(e).

These elections should be made on a supplemental Form 706 filed with the Internal Revenue Service at the following address: Department of the Treasury, Internal Revenue Service, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915. A copy of this letter should be attached to the supplemental Form 706.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

Melissa C. Liquerman

By: _____
Melissa C. Liquerman
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 purposes

cc: